

No. 9/5/84-6Lab/4508.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workmen and the management of M/S Porritts of Spencer (Asia) Limited, 113/114, Sector 24, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 385/1981

Between

SHRI K.K. MEHTANI, WORKMAN AND THE MANAGEMENT OF M/S PORRITTS & SPENCER
(ASIA) LIMITED, 113/114, SECTOR 24, FARIDABAD

Present.—

Shri R. P. Singh for the workman.
Dr. Anand Parkash for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri K. K. Mehtani, Workman and the Management of M/s Porritts & Spencer (Asia) Limited, 113/114, Sector 24, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service/dismissal of Shri K.K. Mehtani was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 14th January, 1982, it was alleged by Shri K.K. Mehtani, claimant that he was employed by the respondent-management on terms and conditions contained in the letter of appointment dated 23rd November, 1973 at the monthly salary of Rs. 750 and that he performed his duty to the entire satisfaction of the Management, due to which he was confirmed as shift Supervisor on 13th June, 1974. It was then alleged that the Management, as a means of unfair labour practice altered his service conditions by forcing upon him under threat to dispense with permanent service, to enter into with the Management a service agreement dated 14th September, 1974, by which he was appointed as Technical Supervisor with effect from 1st June, 1974 for a period of three years. It was further alleged that the duties of purely manual skilled and technical nature were performed by the claimant and he had no power to appoint, dismiss or to discharge functions of a supervisory nature. It was then alleged that the Management in its letter dated 21st October, 1974 promoted him to the post of Junior Executive on a probation of one year which promotion was intended and devised to deprive the claimant permanency in job and was pursued as its policy of unfair labour practice. It was then alleged that regardless of the change of designation, the claimant performed the duties of manual skilled and technical nature until his services were illegally terminated without any rhyme or reason by the Management by their letter dated 8th May, 1981. It was further alleged that the action of the Management was punitive in nature and no enquiry was held into any alleged misconduct and thus amounted to victimisation. It was also alleged that the services of the claimant were terminated in violation of the provisions of the Industrial Disputes Act, 1947. It was, therefore, prayed that the claimant be reinstated with full back-wages and continuity of service.

3. The respondent-management in its written statement dated 30th January, 1982, pleaded that the claimant was not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 because he had been performing the duties which were managerial, administrative and supervisory in nature and was drawing a salary exceeding Rs. 500 per month and was drawing basic salary of Rs. 1180 and House Rent Allowance of Rs. 354 per month at the time of termination of his service besides perquisites and benefits applicable to executive grade employees such as Leave Travel Allowance, reimbursement of medical expenses, reimbursement of conveyance expenses and membership of Superannuation Fund. It was denied that the claimant was performing any technical or skilled manual work and that the Foremen, Assistant Foremen and Clerk worked under him. It was then pleaded that the claimant was submitting weekly production reports of his department, requisitioning raw materials, recommending increment in respect of the workmen and deputing the workmen for special assignments etc. It was also pleaded that the claimant was sanctioning the leave applications of the workmen, recommending advances against salaries and loans to the workmen from the Provident Fund and also determined the production incentive paid to the workmen. It was further pleaded that the claimant was appointed as Shift Supervisor and later on was appointed as Technical Supervisor and then promoted to the post of Junior Executive. It was also pleaded that the Management was not bound to give reasons for terminating the services of the claimant and was accordingly paid one months salary in lieu of notice. It was denied that the action of the Management in terminating the services of the claimant was punitive in nature and that the management having lost confidence in the petitioner terminated his services which did not amount to victimisation and that the provisions of the Industrial Disputes Act, 1947 did not apply to the claimant.

4. The claimant in his rejoinder dated 23rd February, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 23rd February, 1982 and 8th May, 1982.

(1) Whether the claimant was not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 ? OPM.

(2) Whether the termination of service/dismissal of Shri K.K. Mehtani was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the claimant has examined himself and documents, Ex. W-1 to W-75, have been tendered into evidence. The respondent-Management has examined 7 witnesses and documents, Ex. M-1 to M-193, have been tendered into evidence. After going through the entire evidence and hearing the learned representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1

7. The Management has examined MW-1 Shri Y.N. Mallah, Production Manager, who stated that the Weaving Department was directly under him. He further stated that the claimant gave an application Ex. M-1 and that Ex. M-2 was the letter of appointment while Ex. M-3 was the letter of confirmation. He then stated that the agreement Ex. M-4 was executed by the claimant as well as the Company and that Ex. M-5 was the letter of promotion and Ex. M-6, M-7 and M-9 were the letters of increment and that the services of the claimant were terminated,—vide letter Ex. M-10, when he was in the Executive Cadre and that the Shop Floor Staff and the workmen worked under him. He further stated that the claimant used to sanction the leave, grant loan applications and issue the gate passes and further that the claimant used to issue allot the job to the workers. He also stated that the claimant used to issue instructions to Foremen and Assistant Foremen in Woollen and Cotton Weaving Department and also advised the higher Management regarding disciplinary action to be taken against the workers of this Department. He also stated that the slips requisiting the material were issued by the claimant who also used to put the workers on extra duty. He then stated that the weekly report regarding the production were checked by the claimant and also recommended the annual increment to the workers. He further stated that a cabin was given to the claimant who was drawing more than Rs 1,500 per month before the termination of his service and also proved the documents Ex. M-12, M-12/1, M-12/2, M-13, M-13/1, M-13/2, M-14, M-14/1, M-14/2, M-15 to M-17, Ex. M-15/1, M-15/2, Ex. M-17/1, Ex. M-17/2 and Ex. M-18 to M-29, Ex. M-29/1, Ex. M-30, Ex. M-31, Ex. M-31/1 to Ex. M-31/4, Ex. M-32 to Ex. M-34, Ex. M-34/1 to Ex. M-34/5, Ex. M-36/1, and Ex. M-37 to Ex. M-44 and Ex. M-44/1, MW-2/Shri P.L. Jain, Secretary and Chief Accountant of the respondent Company, stated that Shri Y.N. Mallah was the Production Manager/Factory Manager and that there were various departments in the factory, which were looked after by the Departmental Head. He further stated that the claimant was looking after the Weaving Department which included cotton and Woollen Departments and there were two Foremen, two Assistant Foremen and one Clerk and 54 workers under him. He further stated that the claimant was working in the Executive Cadre and that his basic salary was Rs. 1,180 per month plus House rent 30% and conveyance allowance of Rs. 250 per month. He proved the documents Ex. M-45 to M-69. MW-3 Shri Madan Lal Security Officer of the Respondent Company stated that the claimant was in the Executive Cadre since 1978 and remained as such till his services were terminated in 1980 and was looking after two Departments i.e. Woollen Weaving and Cotton Weaving as Departmental Head and in the night shift, the claimant was the incharge of the entire mills. MW-4 Shri Suresh Kumar Batra Machinist stated that the claimant was the incharge of Cotton and Woollen Weaving Departments and that there were 50/60 workers in these departments besides 4/5 Foremen. He then stated that the claimant used to grant loan applications and issue the gate passes and that the job allotment was also done by him. MW-5 Shri Ram Raj Parshad Machinist stated that the claimant used to look after the Cotton Weaving and Woollen Weaving Departments and there were 50/60 workers and there were 4/5 Foremen in his department. He then stated that the leave/advances were sanctioned by the claimant and that the gate passes were issued by him. He further stated that the claimant used to put the workers on over time duty and that the job allotment was made by the Foremen on the instructions of the claimant. The documents Ex. M-70 to M-178 were proved by the Management in cross-examination of the claimant who appeared as WW-1. MW-7 Shri Gurbachan Singh proved the Employees Provident Fund Account Statement Ex. M-179 to M-193. He stated that the name of the claimant was included in the Employees Provident Fund Scheme.

8. Shri K.K. Mehtani Claimant has appeared as WW-1 and stated that he made the application Ex. M-1 on the basis of which the letter of appointment was issued to him but no job was assigned in that letter. He further stated that training was imparted to him by Shri Y.N. Mallah who was the Departmental Head and Production Manager, at that time. He further stated that the training was given to him in other Departments and after training he submitted his report. He then stated that Ex. M-4 was the agreement by which his designation was changed, but there was no change in the nature of duty. He further stated that his duties were to attend the break down, run the machine, test the yarn, repair machine, keep watch on the production, and to ensure that product is being manufactured according to the design. He further stated that in case of break down in the yarn,

he alongwith other workers used to stop the machine and reconnect the yarn and to continue the production. He then stated that he used to place beam at the time of starting of the machine. He also stated that the Carding and Spinning Department was headed by Shri P.C. Dutta, Weaving and Cotton Woollen by Shri Y.N. Mallah, Picking and Needling Department by Shri S.K. Sharma. He further stated that he was never appointed or designated as Departmental Head and he had no authority to dismiss or terminate the services of any workmen or to institute the enquiry against them. He further stated that he received injuries while working on the machine several times and was attended by the Company Doctor and had marks on the left hand first finger. He further stated that the Foremen used to attend minor repairs, while major repairs, were referred to the claimant and if he could not do that, it was referred to Mr. Y.N. Mallah. He also stated that while at ending the breakdown, he used to seek assistance of Foremen Assistant Foremen and helpers and that all this job was done collectively. He also stated at Labour Relations Manager used to sanction leave/loans and to maintain the records. He further stated that the leave/loans applications were sanctioned by the Departmental Head like Mr. P.C. Dutta, etc. but in their absence the claimant as well as the Foremen used to sanction the same. He then stated that there were two provident funds in the factory, one for the workers and other for the staff and that he was a member of the workers provident fund. He also stated that duty rosters were prepared by Shri Y.N. Mallah and that shift changes were also made by him. He also stated that if he did not attend to the break down, a complaint was made against him and that the warning letters, Ex. W-1 to W-9, were issued to the claimant. He further stated that he used to receive the defect damage slips signed by Mr. Y.N. Mallah which were Ex. W-2, W-3 and W-12. He also stated that the daily report of the evening and night shift was prepared by Shri Mohinder Pal Joshi Foreman, which was submitted to Shri Y.N. Mallah and that Ex. W-13, and W-14 were the shift changes prepared by Shri M.K. Nauria, Labour Relations Manager. He further stated that emoluments received by the Foremen were Rs. 1,200 as basic plus medical, conveyance and house rent allowance. He further stated that no cabin was allotted to him, but it was clock room in which tool etc. were kept and everyone had an access to the said room. He also stated that Mr. Y.N. Mallah used to issue instructions to him and a chit in that respect was Ex. W-15, by which he was asked to start warping 16 and 23 feet R.H. Machine. He further stated that the appreciation letter Ex. W-16 was issued to the claimant. He then stated that Ex. W-17 was the copy of the complaint made to the police, but no action was taken there on and that Ex. W-18 was the certified copy of the conciliation proceedings. The documents Ex. W-19 to W-75 were tendered into evidence by the claimant.

9. A perusal of the above evidence would show that the case of the management is that the claimant was appointed as Supervisor on 23rd November, 1973,—vide letter Ex. M-2 with the consolidated salary of Rs 750 per month but later on was appointed as Technical Supervisor,—vide agreement dated 14th September, 1974 for a period of three years with basic salary of Rs. 750 per month and he was promoted to the post of Junior Executive Cadre,—vide letter dated 21st October, 1974 Ex. M-5 with basic salary of Rs. 750 per month plus House Rent Allowance and medical benefit and that,—vide letter Ex. M-7 dated 5th November, 1976, his basic salary was increased to Rs. 850 and,—vide letter Ex. M-8 dated 26th October, 1979 it was further increased to Rs. 1120 per month. The letter Ex. M-9 dated 25th November, 1980 shows that the claimant was put in grade B in the scale of Rs. 1000—2240. The letter Ex. M-10 dated 8th May, 1981 recites that the services of the claimant stood terminated with immediate effect and a cheque for one month salary in lieu of notice was enclosed with the said letter. The case of the claimant on the other hand, is that though he was designated as Shift Supervisor, Technical Supervisor and Junior Executive, he was, in fact, performing the duties which were manual and technical in nature and that he had no authority to appoint, dismiss or suspend any workman or to hold enquiry against them and further that he used to recommend loan/leave applications, but in the absence of Departmental Head. Such applications were signed by the claimant as well as Foremen. Both the parties have led evidence referred to above in support of their respective contentions and the question that arises for determination as to whether the claimant was covered by the definition of a workman as given in Section 2 (s) of the Industrial Disputes Act, 1947 or not which reads as under:—

Section 2(s) —“ ‘Workman’ means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person —

- (i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1959 (45 of 1950), or the Navy Discipline Act, 1934 (34 of 1934) ; or
- (ii) who is employed in the police service or as an officer or other employee of a prison ; or
- (iii) who is employed mainly in a managerial or administrative capacity ; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or, exercises, either by the nature —of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature.”

The oral evidence led by the management has already been reproduced above in detail, which is to the effect that the claimant was appointed as Shift Supervisor and then as Technical Supervisor and later on junior Executive. MW-1 Shri Y.N. Mallah admitted in his cross-examination that the claimant had no power to appoint, suspend, terminate or punish any workmen. He further admitted that the claimant could not administer a warning to any workman, but on the other hand, he could only make his recommendations. He further stated that the claimant used to give technical advice to the Foremen etc. He then stated that he did not remember if the finger of the claimant was cut while operating the machine. These admissions of Mr. Y.N. Mallah go to show that the claimant, though designated as Shift Supervisor, Technical Supervisor and Junior Executive, was, in fact, not conferred any power to take action against any workman because he had no power to appoint, suspend, terminate or punish or even warn a workman. The argument of the representative of the claimant was that the claimant was merely a tool in the hands of Mr. Y.N. Mallah, Production Manager and that several jobs were assigned to the claimant and was not exercising any supervisory control over the workmen and that the person, who merely recommended the applications could not be called a supervisor. MW-2 Shri P.L. Jain admitted in cross-examination that the Department of Spinning was headed by Mr. P.C. Dutta, Finishing by Mr. S.K. Sharma, Despatch and Inspection by Mr. B.K. Bakshi, Industrial Relations by Mr. Talwar, Accounts by Mr. A.K. Suri, and purchase by Mr. Ramesh Chandra. Consequently, the claimant, who did not exercise any supervisory control, as mentioned above cannot be termed as a Departmental Head. Likewise the testimony of MW-3 Shri Madan Lal, MW-4 Shri Suresh Kumar and MW-5 Shri Ram Raj Parshad to the effect that the claimant was the incharge of woollen, weaving and Cotton Weaving Department cannot be accepted because it has come in evidence that the claimant had no supervisory control over the workmen. A number of weekly production reports Ex. -M-11 to M-17, and M-82 to M-93 have been produced by the Management. These documents show that some production reports were signed by the claimant, while some production report by the other persons, but ultimately signed by the production Manager. 10 gate passes have been proved by the Management which are Ex. M-27, M-128 and M-133 to M-140. The claimant remained in service of the respondent during the years 1973 to 1981 and by signing only 10 gate passes it cannot be said that he was issuing the gate passes in all cases because the claimant while appearing as WW-1 stated that in the absence of the Departmental Head, the gate passes were issued by him as well as the Foremen. The material forms Ex. M-141 and M-142, show that requisitioning of the material was the job of a clerical nature. Moreover these forms were countersigned by Shri M.K. Narula, who was the Departmental Head. The documents Ex. M-143 and M-144 relate to the rotation of the shifts of workers and these were countersigned by Mr. M.K. Narula Departmental Head, and were circulated by the claimant. The documents Ex-29 to M-34, M-41 and M-70 show that the claimant made recommendation for grant of increment to the workers. He did not sanction the increment and consequently the authority to sanction the increment was Mr. M.K. Narula, as mentioned in the documents Ex. M-34. Likewise, the claimant only recommended the applications Ex. M-146, M-147, M-71, M-72, M-31, M-32 and M-33 regarding reward to workers and their performance. The documents Ex. M-81 and Ex. M-73 and M-78 show that in the enquiry proceedings, the claimant mentioned his designation as Supervisor. As already mentioned above, he was appointed as Shift Supervisor but he was not exercising any supervisory control over the workmen. The complaints Ex. M-42, M-43, M-168 to M-175 were mere forwarded by the claimant for necessary action. The documents Ex. M-179 to M-193 show the provident fund account of the claimant and other workers. MW-7 Shri Gurbachan have deposed that there were two schemes regarding provident fund in the respondent factory, one known as Employees Provident Fund Scheme, while the other staff Provident Fund Scheme and that the name of the claimant was included in the Employees Provident Fund Scheme. The documents Ex. M-45 to M-47 contain the training programme prepared by Mr. Y.N. Mallah while Ex. M-48 is the training report submitted by the claimant. The documents Ex. M-49 to M-51 contain instructions given by Mr. Y.N. Mallah, while Ex. M-52 is the complaint made by the claimant against certain workers, to the Director of the Company. The documents Ex. M-54 and M-75 to M-80 show that the over time was verified by the claimant but it was not sanctioned by the claimant. The documents Ex. M-55 to M-63, M-44 and M-172, show that the claimant made recommendations regarding the extension of service of workers, but he did not appoint any workman. The documents Ex. M-19 to M-24, M-64, Ex. M-94 to M-112 and Ex. M-114 to M-118 are the leave applications which show that some leave applications were granted by the claimant and others. As already mentioned above, the claimant stated that in the absence of the Departmental Head, these applications were sanctioned by him as well as the Foreman. If during his service from 1973 to 1981, he has sanctioned some leave applications, it does not mean that he was signing authority in this respect because the signing of few leave applications during the period of eight years shows that the claimant signed some leave application in the absence of the Departmental Head because otherwise the number of leave applications would have touched the figure of more than one thousand. The documents Ex. M-35, M-36, M-67, M-68 and M-147 to M-165 show that the claimant recommended grant of salary advances but he did not sanction any salary advance. Consequently the documentary evidence led by the Management, which has been discussed in details does not go to show that the claimant was exercising any supervisory control over the workmen but, on the other hand, he was making recommendations in most of the cases and the authority to accept that recommendation was the Departmental Head and not the claimant. In the ruling reported as **Ananda Bazar Patrika (Private) Ltd. and its workmen**, 1969-II-LIJ page 670, the only power which the claimant in that case could exercise was to allocate work between them, to permit them to leave during the office hours and to recommend their leave application, and it was held that few minor duties of a supervisory nature could not convert his office into that of a supervisor.

10. The claimant is a technical hand, while appearing as WW-1 he deposed that he was performing the following duties :—

- (1) To attend the break down,
- (2) To test the yarn,
- (3) To repair the machine,
- (4) To keep watch on the production,
- (5) To ensure that the product was being manufactured according to the design.
- (6) In-case of break down in the yarn, he used to stop the machine and reconnect the yarn.
- (7) He used to place the beam alongwith the other workers at the time of starting the machine.
- (8) Major repairs of the machine were referred to him.
- (9) He used to run the machine to the extent to coincide with card quality viz. warp count, weft count, picks per inch and end per inch.
- (10) To carry the test into testing house situated in Carding and Spinning Department.

He has also produced the Chit Ex. W-15 issued by Shri Y.N. Mallah asking the claimant to start warping 16—23 Reet-R.H. Machine. He stated that warping job was done by him alongwith other workers as directed by Shri Y.N. Mallah. He further stated that he received injuries, while working on the machine several times, which were attended to by the Company Doctor and that injury marks still existed on his left hand first finger. The testimony of the claimant thus shows that he was performing different jobs of a technical nature and for this purpose had to perform the job which was also manual in nature. In the ruling reported as **Titaghur Paper Mills Co. Ltd. and First Tribunal, West Bengal and others**, 1982-II-LLJ page 288, it is laid down that in the matter of production and running sophisticated machines, persons having technical expertise are often required to guide labourers as to how the machine will be run and how the technical process of production is to be carried out, but such technicians render their technical expertise alongwith other workers and that in such circumstances, it cannot be said that simply because they did not run the machines themselves, but stood by an guided ordinary workmen in the matter of running the machine and are carrying out the phases of production, they were purely administrators and/or supervisors and their only job is to supervise men and not the machine and/or technical works of production. It is further laid down that if a person is required to render his technical knowledge in the matter of production alongwith other workers as directed by other superiors then he cannot be said to be exercising supervisory work and/or administrative work. This ruling applies to, the facts of the present case. Keeping in view the various duties performed by the claimant, which were technical as well as manual in nature, it cannot be held that the claimant was not a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947.

11. The learned representative of the Management placed reliance on the ruling reported as **Burmah Shell Oil Storage and Distributing Co. of India Ltd. versus The Burmah Shell Management Staff Association and others**, 1971-Lab.I.C. 699 in which it was laid down that a Transport Engineer, District Engineer, Sales Engineer and Foreman Chemical in Burmah Shell Oil Storage and Distributing Co. India Ltd. were not the workmen. This ruling is distinguishable on facts because in that case it was found that principal duties of those persons were of supervisory nature while in the present case it has been found that the claimant was performing the duties on basis of which he was covered by the definition of workman. The second ruling is **All India Reserve Bank Employees' Association and another, and Reserve Bank of India and another**, 1965-II-LIJ-page 175, in which, it was laid down that considering the nature of work and duties performed by the Class II employees of the Reserve Bank of India except the personal assistant were employed to do supervisory work and hence were not workmen. This ruling is distinguishable on facts because in the present case the limit was performing the duties which were not supervisory in nature for the reasons given above. The third ruling is **Muruga III Estate Hardypet and Industrial and Industrial Tribunal, Madras and another**, 1964-II-LLJ page 164, in which it was laid down that the test to determine in such cases, is to ascertain the purposes for which the appointment was made irrespective of whether the performance of such supervisory duties does not occupy the entire time of the concerned employee. In the present case, it has been found that the most of the time of the claimant was spent in performing the duties which were manual and technical in nature. The fourth ruling is **Workmen of Belmer Lawrie and Co. Ltd. and Balmer Lawrie and Co. Ltd. and another**, 1964-I-LLJ-page 380, in which it is laid down that the scales should be determined on the basis of documentary evidence and that such question could not be decided obviously on the interested testimony either of the workmen or of the employer and his witnesses. This ruling is distinguishable on facts because in the present case nature of duties being performed by the claimant has to be determined on the basis of oral as well as documentary evidence led by both the parties and it has been found that the claimant was a workman.

12. The learned representative of the workman placed reliance on the ruling reported as **Engineering Construction Corporation Ltd., Madras and Additional Labour Court Madras and others**, 1980-II-LLJ page 16 in which it was laid down that the person appointed as Foreman (Carpentary) was a workman. The 2nd ruling is **D.B. Maheswari and Delhi-Administration and others** 1983-II-LLJ page 425, in which it was held that a person though designated as Accounts Officer or Officer on special duty or Store Purchase Officer was a workman because he was discharging manual/clerical duties. The third ruling is **Ved Parkash Gupta and Messers Delfon Cable India (P) Ltd.**, 184-I-LLJ page 546, in which it was held that the Security Inspector was a workman. The 4th ruling is **Bengal United Tea Company Ltd. and Ram Labhaya and others**, 1962-II-LLJ page 37, in which, it was held that the Assistant Medical Officer was a workman.

13. In view of the above discussion, it is held that the Management has failed to prove that claimant was not a workman as defined in Section 2(S) of the Industrial Disputes Act, 1947. The issue is decided accordingly against the Management.

Issue No. 2 :

14. The provisions of Section-25F of the Industrial Disputes Act, 1947 have not been complied with because no compensation was paid to the claimant, while terminating his service and as such the impugned order terminating his service is neither justified nor in order. The learned representative of the management, however, argued that the services of the claimant had been terminated for loss of confidence because of his non-suitability for the job and as such it would not be in the interest of either of the parties to reinstate the claimant. Reliance has also been placed on the ruling reported as **Management of Monghyr Factory of I.T.C. Ltd. Monghyr and Labour Court, Patna and other**, 1978-II-LLJ page 354, in which, it was laid down that instead of reinstatement, the compensation was the proper remedy. The second ruling is **Shalimar Paint Ltd. versus The Eighth Industrial Tribunal of West Bengal and others**, 1977-Lab.I.C. 213, in which it was laid down that even though the Tribunal was justified in considering the evidence in respect of additional ground as inadmissible and irrelevant on the first issue as to whether the dismissal of respondent by the company was justified or not, but the Tribunal should have taken into consideration the same in the matter of awarding relief. The submission was that the Management had led sufficient evidence to show that the claimant had lost confidence and as such instead of reinstatement he should be awarded adequate compensation. The third ruling is **M/s Ruby General Insurance Co. Ltd. versus Shri R. P. Chopra** 1969 (3) Supreme Court Cases 653, in which it is laid down that keeping in view the circumstances of that case, the Tribunal ought not to have directed reinstatement of the respondent because the compensation was the proper remedy.

15. The learned representative of the workman has placed reliance on the ruling reported as **L. Michael and another and M/s Johnson Pumps India Ltd.**, 1975 I-L.L.J. page 262 in which it is laid down that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations and that the Court is concerned with that latter and not the former. The second ruling is **The Management of M/s Panitola Tea Estate versus The Workmen**, 1971 Lab. I.C. page 1235, in which, it is laid down that the general rule on setting aside wrongful dismissal of a workman is reinstatement.

16. In the present case, the management has examined Shri Y.N. Mallah Production Manager who stated that he noticed a change in the behaviour of the claimant as he was thinking that he was more qualified/experienced hand than his superiors and that the claimant used to speak in these terms and from his outward behaviour it appeared that he posed himself as a superior officer. He further stated that the claimant did not co-operate with Mr. Datta who was the Manager in Carding, Spinning and Needling Departments and that the claimant had altercation with Mr. Datta. He further stated that the claimant did not join Sales Department on the plea that he was concerned with the Production Department. He also stated that the claimant told him that he knew the secrets of the company and would disclose the same to the Government authorities and would blackmail the company. MW-2 Shri P.L. Jain stated that in April, 1984, the claimant came to him and used abusive language against him and other officers. MW-3 Shri Madan Lal Security Officer stated that the claimant used to come under the influence of liquor in the second shift. No complaint was made in writing against the claimant regarding the allegations relating to the period prior to the termination of the service of the claimant nor the claimant was charge sheeted nor any enquiry was held against his alleged misconduct. Consequently, the allegations cannot be held to have been proved because the alleged incidents were not recorded in writing and the claimant was not given an opportunity to explain these matters nor any charge sheet was framed against him nor any enquiry was held by the Management. From the evidence, it is however apparent that the relations between the claimant and the management are strained and they have no liking for each other. Under these circumstances, the end of justice would be met if the order of termination is set aside and instead of reinstatement, the claimant is awarded compensation to the extent of seven years' wages which he was drawing immediately before terminating his service on 8th May, 1981. The award is passed accordingly.

Dated the 18th May, 1985

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 423, dated the 18th May, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.